

Introduced by Senator Hill

February 21, 2014

An act to amend Section 13350 of, and to add Sections 12022.7 and 13304 to, the Business and Professions Code, relating to weights and measures.

LEGISLATIVE COUNSEL'S DIGEST

SB 1328, as introduced, Hill. Weights and measures.

(1) Under existing law, the Department of Food and Agriculture has general supervision of weights and measures and weighing and measuring devices sold or used in the state, and provides that the duty of enforcing and carrying out those provisions is vested with the Secretary of Food and Agriculture and in each sealer acting under the supervision and direction of the secretary. Existing law makes it unlawful for any person to sell poultry or smoked, fresh, frozen, cooked, dried, or pickled meats or fish other than by weight determined at the time of sale on a scale properly sealed in accordance with specified requirements, except as specified. Existing law specifies that fat added to fresh meat or roasts shall not be considered tare weight if the package is labeled as containing added fat. A violation of the provisions, or any regulations adopted pursuant to those provisions, regulating weights and measurements is a crime.

This bill would authorize the secretary, by regulation, to establish a uniform policy consistent with federal law relating to the use of dry tare weight or wet tare weight methods of measurement for the retail sale of meat, poultry, and fish products. Because a violation of a regulation adopted pursuant to those provisions would be a crime, the bill would impose a state-mandated local program.

(2) Existing law provides the criteria and methodology, as specified, by which local officials are to measure and verify the accuracy of a point-of-sale system used by retail establishments as a means for determining the price of an item being purchased by a consumer, and authorizes the board of supervisors of a county, by ordinance, to charge a point-of-sale inspection fee or an annual registration fee for the county's costs for inspection and testing. Existing law provides that a sealer may reinspect any retail facility that has a compliance rate of less than 98%.

The bill would establish a compliance rate modeled after the accuracy requirements described in the National Institute of Standards and Technology Handbook 130 for grocery stores, as defined, that have a policy to refund the amount of the product or provide the product free of charge in the event that the amount charged is greater than the amount advertised, posted, marked, displayed, or quoted.

(3) Existing law authorizes a city or county to license any kind of business, unless prohibited by law, and authorizes the city or county to levy license fees.

This bill would authorize the secretary, by regulation, to impose an additional assessment of up to \$2 for the license of a business that uses a point-of-sale system, to be deposited in the Department of Food and Agriculture Fund, which would be available to the secretary, upon appropriation by the Legislature, for purposes of carrying out the provisions regulating the use of point-of-sale systems.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12022.7 is added to the Business and
- 2 Professions Code, to read:
- 3 12022.7. The secretary may adopt regulations consistent with
- 4 federal law to establish a uniform policy relating to the use of dry
- 5 tare weight or wet tare weight methods of measurement for the
- 6 retail sale of meat, poultry, and fish products.

1 SEC. 2. Section 13304 is added to the Business and Professions
2 Code, to read:

3 13304. The secretary may adopt regulations to impose an
4 additional assessment of up to two dollars (\$2), not to exceed the
5 amount necessary to carry out the provisions of this chapter, to
6 obtain a business license for a business that uses a point-of-sale
7 system. The additional assessment shall be deposited in the
8 Department of Food and Agriculture Fund, and shall be available
9 to the secretary, upon appropriation by the Legislature, for purposes
10 of carrying out the provisions of this chapter.

11 SEC. 3. Section 13350 of the Business and Professions Code
12 is amended to read:

13 13350. (a) The board of supervisors of any county or city and
14 county that has adopted or that adopts an ordinance for the purposes
15 of determining the pricing accuracy of a retail establishment using
16 a point-of-sale (POS) system, shall base the initial standard
17 inspection of the POS system on the following criteria:

18 (1) The initial standard inspection shall be performed by
19 collecting a random sample of items that shall include a maximum
20 of 50 percent sale items from either:

- 21 (i) One department of a retail store.
- 22 (ii) Multiple areas of a retail store.
- 23 (iii) The entire store.

24 (2) The initial standard inspection shall be performed by testing
25 a minimum random sample of 10 items for a retail establishment
26 with three or fewer POS checkout registers.

27 (3) The initial standard inspection shall be performed by testing
28 a minimum random sample of 25 items for a retail establishment
29 with 4 to 9 POS checkout registers.

30 (4) The initial standard inspection shall be performed by testing
31 a minimum random sample of 50 items for retail establishments
32 with 10 or more POS checkout registers.

33 (5) The sealer shall verify that the lowest advertised, posted,
34 marked, displayed, or quoted price is the same as the price
35 displayed or computed by the point-of-sale equipment or printed
36 receipt. Only items computed at a higher price than the lowest
37 advertised, posted, marked, displayed, or quoted price shall be
38 considered not in compliance.

39 (6) The minimum random sample size shall not apply to
40 inspections of any establishment at which fewer items than the

1 number specified as the minimum sample size are marked or
2 displayed with a posted or advertised item price.

3 (7) The maximum percentage of sale item restriction in
4 paragraph (1) shall not apply to inspections of any establishment
5 at which a marketing or promotional practice does not enable the
6 sampling of the minimum required percentage of nonsale items,
7 such as “Everything In Store 50 percent Off” or the like.

8 (8) The compliance rate percentage of a retail establishment
9 shall be determined by dividing the number of items in compliance
10 by the sample size multiplied by 100.

11 (b) Enforcement action may be taken for any item not in
12 compliance.

13 (c) The sealer may reinspect any retail facility that has a
14 compliance rate of less than 98 percent.

15 (d) (1) *Notwithstanding subdivision (a), for a grocery store*
16 *that has a policy to refund the amount of the product, or to provide*
17 *the product free of charge, if the amount charged for the item is*
18 *greater than the price advertised, posted, marked, displayed, or*
19 *quoted, the compliance rate shall be modeled after the accuracy*
20 *requirements specified in the National Institute of Standards and*
21 *Technology Handbook 130, 2014 Edition (HB 130) – Examination*
22 *Procedures for Price Verification.*

23 (2) *For purposes of this subdivision, “grocery store” means a*
24 *full-line, self-service retail store with gross annual sales of two*
25 *million dollars (\$2,000,000) or more, and that sells a line of dry*
26 *groceries, canned goods, or nonfood items, and some perishable*
27 *items.*

28 ~~(d)~~

29 (e) The board of supervisors, by ordinance, may charge a
30 point-of-sale system inspection fee or an annual registration fee,
31 not to exceed the county’s total cost of inspecting or testing the
32 accuracy of prices accessed or generated by the system pursuant
33 to this section.

34 ~~(e)~~

35 (f) The board of supervisors, by ordinance, may charge a
36 reinspection fee for reinspections of a retail establishment that fails
37 the prior inspection, not to exceed the county’s total cost of
38 reinspecting or testing the accuracy of prices accessed or generated
39 by the system pursuant to this section.

1 SEC. 4. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution because
3 the only costs that may be incurred by a local agency or school
4 district will be incurred because this act creates a new crime or
5 infraction, eliminates a crime or infraction, or changes the penalty
6 for a crime or infraction, within the meaning of Section 17556 of
7 the Government Code, or changes the definition of a crime within
8 the meaning of Section 6 of Article XIII B of the California
9 Constitution.

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